

**TESTIMONY OF  
LAWRENCE J. FRIEDMAN  
COUNSEL FOR STEVE WEINBERG**

**BEFORE**

**SUBCOMMITTEE ON COMMERCIAL AND  
ADMINISTRATIVE LAW  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES**

**“Oversight Hearing on the Arbitration Process of the  
National Football League Players Association”**

**ON**

**DECEMBER 7, 2006**

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Mr. Chairman, Members of the Subcommittee, my name is Larry Friedman. I am an attorney in Dallas, Texas. I have been licensed to practice law for over twenty-eight years. I appear before you today at the request of the Subcommittee to discuss the arbitration procedure under the NFLPA’s Regulations Governing Contract Advisors (the “Regulations”). I am also here today as a representative of Steve Weinberg, who is a professional sports agent.

Mr. Weinberg was a certified Contract Advisor under a regulatory system set up pursuant to the Collective Bargaining Agreement (the “CBA”) between the NFL Management Counsel and the National Football League Players Association (the “NFLPA”). He obtained NFLPA certification in 1983, and he is also an attorney at law, duly licensed and in good standing, in the State of Texas. In the twenty years between 1983 and 2003, Mr. Weinberg built a very successful practice

representing NFL players. He was responsible for negotiating some of the most innovative and lucrative contracts in NFL history.

Mr. Weinberg was decertified as a Contract Advisor in 2003; at the time, he represented forty-two (42) NFL players, including the Washington Redskins' All-Pro running back, Stephen Davis, on behalf of whom Mr. Weinberg negotiated a contract worth \$135 million. Mr. Weinberg's decertification, and the actions taken against other Contract Advisors discussed here today, are directly attributable to the fact that the NFLPA enforces its Regulations in an arbitrary and capricious manner, using its status as the exclusive bargaining representative of NFL players, under Section 9 of the National Labor Relation Act ("NLRA"), as justification for any number of arbitrary sanctions, including suspension and decertification, against its Agents, especially against those Agents who draw the ire of top NFLPA officials for one reason or another.

Mr. Weinberg recently filed a lawsuit in State District Court in Dallas, Texas, against the NFLPA, Gene Upshaw, Richard Berthelsen, Tom DePaso, Roger Kaplan, and others, based in part on their violation of his right to due process under the CBA and the NFLPA regulations governing Agent conduct—and based, in part, on Mr. Weinberg's inability to obtain an arbitration proceeding that was fundamentally fair. I understand that each of you has been provided with a copy of Mr. Weinberg's lawsuit.

I did not come here today to try Mr. Weinberg's case. It is my intention to address the inherently unfair manner in which the NFLPA conducts its agent disciplinary arbitration process. The NFLPA's recordbook is a poor one on arbitration. The NFLPA consistently disregards its own Regulations; it fails to provide its players and agents with a fair arbitration process; it applies its own

rules arbitrarily; and, it fails to ensure that its players and agents get, not just an arbitration hearing, but a fair, impartial, and meaningful arbitration hearing.

In particular, the NFLPA blatantly violates the central provision of the CBA as it relates to Contract Advisors. Article VI, Section 1, states, in part, as follows:

#### NFLPA AGENT CERTIFICATION

Section 1. Exclusive Representation: The NFLMC and the Clubs recognize that the NFLPA regulates the conduct of agents who represent players in individual contract negotiations with Clubs. The NFLMC and **the Clubs agree that the Clubs are prohibited from engaging in individual contract negotiations with any agent who is not listed by the NFLPA as being duly certified by the NFLPA in accordance with its role as exclusive bargaining agent for NFL players. The NFLPA shall provide and publish a list of agents who are currently certified in accordance with its agent regulation system, and shall notify the NFLMC and the Clubs of any deletions or additions to the list pursuant to its procedures. The NFLPA agrees that it shall not delete any agent from its list until that agent has exhausted the opportunity to appeal the deletion to a neutral arbitrator pursuant to its agent regulation system.** The NFLPA shall have sole and exclusive authority to determine the number of agents to be certified, and the grounds for withdrawing or denying certification of an agent. The NFLPA agrees that it will not discipline, dismiss or decertify agents based upon the results they achieve or do not achieve in negotiating terms or conditions of employment with NFL Clubs. (emphasis added)

Section 2. Enforcement: Under procedures to be established by agreement between the NFL and the NFLPA, the Commissioner shall disapprove any NFL Player Contract(s) between a player and a Club unless such player: (a) is represented in the negotiations with respect to such NFL Player Contract(s) by an agent or representative duly certified by the NFLPA in accordance with the NFLPA agent regulation system and authorized to represent him; or (b) acts on his own behalf in negotiating such NFL Player Contract(s).

Section 3. Penalty: Under procedures to be established by agreement between the NFL and the NFLPA, the NFL shall impose a fine of \$10,000 upon any Club that negotiates any NFL Player Contract(s) with an agent or representative not certified by the NFLPA in accordance with the NFLPA agent regulation system if, at the time of such negotiations, such Club either (a) knows that such agent or representative has not been so certified or (b) fails to make reasonable inquiry of the NFLPA as to whether such agent or representative has been so certified. Such fine shall not apply,

however, if the negotiation in question is the first violation of this Article by the Club during the term of this Agreement. It shall not be a violation of this Article for a Club to negotiate with any person named on (or not deleted from) the most recently published list of agents certified by the NFLPA to represent players.<sup>1</sup>

The NFLPA maintains a disciplinary committee to oversee and enforce the Agent Regulations. The NFLPA claims that the procedure for disciplining agents under the Agent Regulations is, essentially, as follows.

The President of the NFLPA appoints a Disciplinary Committee (known as “CARD,” which stands for Committee on Agent Regulation and Discipline) consisting of three (3) to five (5) active or retired players. CARD is supposed to decide whether or not to initiate disciplinary actions against Agents. If CARD decides that discipline is appropriate, it is supposed to initiate a disciplinary proceeding by filing a written complaint. The Agent is then supposed to file an answer to the complaint, but CARD does not necessarily hold a hearing on the matter. Rather, CARD is merely required to send the Agent written notice of its suggested punishment. CARD is not supposed to impose any discipline itself: it is merely supposed to propose discipline.

The Agent can then either accept proposed discipline or file an appeal to the “outside” Arbitrator. Upon the filing of a Notice of Appeal, there is supposed to be an automatic stay of any disciplinary action proposed by CARD. Hence, under the Regulations, if an agent exhausts his/her appellate remedy, **no discipline is supposed to be imposed, except by an arbitrator.**

If the Agent chooses to appeal the proposed punishment, CARD is supposed to bear the burden of proof at the Appellate Hearing to prove the allegations in the Complaint by a

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<sup>1</sup>CBA Section VI.

preponderance of the evidence. And the Agent is supposed to be given the same rights as in a hearing under the American Arbitration Association (“AAA”) rules:

At the hearing of any Appeal pursuant to this Section 6, [CARD] shall have the burden of proving, by a preponderance of the evidence, the allegations of its Complaint. [CARD] and the Contract Advisor shall be afforded a full opportunity to present, though testimony or otherwise, their evidence pertaining to the action or conduct of the Contract Advisor alleged to be in violation of the Regulations. The hearing shall be conducted in accordance with the Voluntary Labor Arbitration Rules of the American Arbitration Association. Each of the parties may appear with Counsel or a representative of its choosing. All hearings pursuant to this Section shall be transcribed. (Emphasis added.)

Thereafter, the Arbitrator has broad discretion to determine whether the Agent violated the Agent Regulations, and, if so, what discipline is appropriate.

Under Section 5 of the Agent Regulations, “this arbitration procedure [is] the exclusive method for resolving any and all disputes.” Section 5(E) of the Agent Regulations permits the NFLPA to select the arbitrator: “The NFLPA shall select a skilled and experienced person to serve as the outside impartial Arbitrator for all cases arising hereunder.” (Emphasis added.)

And, as you know, in recent years, CARD has aggressively brought actions against numerous Contract Advisors, including Steve Weinberg, David Dunn, and Carl Poston—to name a few.

However, the problem with CARD and the NFLPA’s mechanism of enforcing Agent Regulations is this: the system is inherently unfair, and the application of the system is arbitrary, biased, and even more unfair. Let me use Steve Weinberg’s case as an example to explain why the current system fails.

For Steve Weinberg, the system broke down in many places along the way. First, the complaint leading up to his decertification was filed by his former partner, with whom he was in a dispute over the division and distribution of partnership funds. The former partner alleged that Mr.

Weinberg had attempted to prevent him from collecting on a judgment by transferring funds off shore. As a result, Mr. Weinberg's former partner attempted to garnish Mr. Weinberg's agent fees from his players. However, just as in Carl Poston's case, none of Mr. Weinberg's clients complained about his conduct; they only complained about his ex-partner's conduct. No financial misconduct was alleged between Mr. Weinberg and the players. There were no bribes, no improper payoffs, as there were in other cases where CARD doled out punishments in the range of a three-year decertification.

Nonetheless, in February 2003, CARD immediately decertified Mr. Weinberg for three (3) years. Although the three-year decertification was ultimately reduced to an eighteen (18) month suspension on appeal, Mr. Weinberg's punishment took effect before his appeal was final, which violated the language in the CBA prohibiting decertification without an appeal and the language in the Regulations allowing for a stay pending appeal.

In total, fifteen (15) different NFL players filed grievances in connection with the incident for which Mr. Weinberg was decertified; however, none of those players ever complained about Mr. Weinberg's conduct: they all complained about his ex-partner's conduct. Despite this, the NFLPA never investigated or took action against Mr. Weinberg's ex-partner; the NFLPA chose instead to aggressively pursue Mr. Weinberg. Interestingly, a similar thing happened to Mr. Poston, who's client, LaVar Arrington, refused to file a complaint against him---but the NFLPA decided to pursue its own grievance against Mr. Poston anyway.

This ties into the second problem with the NFLPA agent discipline/arbitration system: the decision about which grievances get pursued and which ones get ignored is completely arbitrary; it is based on the whim of the NFLPA's General Counsel, Richard Berthelsen, who decides which

complaints to refer to CARD for action. Although the Regulations generally state what conduct is prohibited (though the categories are broad and subject to change at the whim of the NFLPA's leadership), Berthelsen gets to arbitrarily decide which Regulations to enforce, on which days to enforce them, and against whom to enforce them. As a result, the Regulations are not uniformly enforced against all Agents.

Another problem is that, once the disciplinary process is initiated, the system fails to provide Agents accused of misconduct with any forum where they can obtain fundamental due process---where they can get a fair hearing, face their accusers and cross-examine them (the greatest truth-finding tool in American Jurisprudence), present witnesses, offer evidence, and defend the charges brought against them. Instead, the current NFLPA system is one-sided.

Berthelsen controls the charges that are brought against Agents, he controls what evidence the CARD members hear about the Agents, and he then suggests what punishment the Agents should receive. CARD never gets to play the role of an impartial judge, to hear both sides of the story and decide the matter fairly and impartially. The Agent is not even allowed to attend CARD's hearing. For example, Mr. Weinberg requested to attend the Disciplinary Committee Hearing, but permission to do that was denied. Instead, Mr. Weinberg was only allowed to listen to the disciplinary proceedings by telephone. He was not allowed to speak, not allowed to address questions that he knew the answers to, not allowed to correct false statements that were made at his disciplinary hearing and not allowed to clarify any factual inaccuracies. In sum, Mr. Weinberg was not allowed to contest the allegations made against him or to present evidence in his defense. He could not cross-examine the witnesses, could not tell his side of the story, and could not offer an explanation or a defense. It is even hard to call it a "hearing" because the event that occurred did not rise to the level

of a hearing. As a result, CARD routinely makes its decisions based on Mr. Berthelsen's advice, having only heard one side of the evidence, the side Mr. Berthelsen presented.

Although the NFLPA Regulations purportedly give Contract Advisors the right to appeal CARD's proposal to a "neutral" arbitrator, Mr. Weinberg did not have an opportunity to appeal CARD's proposal to a neutral arbitrator before his decertification took effect—CARD made Mr. Weinberg's decertification effective immediately even though under the CBA and the Regulations Mr. Weinberg was entitled to an automatic stay pending his appeal to the neutral arbitrator.

Yet another problem with the NFLPA agent disciplinary system is that the arbitrator is far from really being neutral: Roger Kaplan is always the NFLPA's pick to serve as the "neutral" arbitrator for each disciplinary arbitration hearing. And, when you consider the fact that he is paid by the NFLPA and that he almost always rules in its favor—you have to ask yourself whether a reasonably prudent person would believe that Roger Kaplan is really "neutral" or really an "outside" arbitrator. Can someone who has been serving as the "regular" NFLPA "neutral," "outside" arbitrator for twelve (12) years still really be neutral?

Prior to his decertification, Steve Weinberg represented forty-two (42) NFL players. Approximately half of those players were about to become Free Agents. He was also an outspoken critic of the manner in which the NFLPA's leadership enforced its Regulations—unfairly and arbitrarily. By immediately decertifying Steve Weinberg, the NFLPA intentionally silenced him and punished him by preventing him from participating in his clients' Free Agent contract negotiations, thus robbing him of the right to an automatic stay under the Regulations and his right to earn a living as a Contract Advisor. This was truly an unfair result. The system failed, and Mr. Weinberg suffered as a result of this very biased process.



In conclusion, on behalf of Mr. Weinberg, I respectfully request that this Committee hold additional hearings concerning the overall fairness and due process with which the NFLPA deals with Agents accused of misconduct. Thank you for your time, and I will be happy to answer any questions you may have.

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